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3.0 CULTURAL RESOURCE PROTECTION

3.1 <u>INTRODUCTION</u>

The Project will develop, establish, and maintain a Cultural Resource Protection (CRP) Program. The purpose of the CRP Program is to guide the Project's compliance with applicable Federal and State cultural resource protection statutes and regulations.

Cultural resources pertain to prehistoric and historic resources, native and non-native. These include archeological sites, structures and objects significant in American history, architecture, archaeology, or culture among others.

The Project actions that have the potential for affecting cultural resources include construction of the pipeline, and its associated temporary and permanent facilities. This includes compressor stations, construction camps, material sites, storage yards, airports and other ancillary facilities.

The primary objective for the Project design phase is to ensure that the areas involved with the Project are surveyed to identify significant cultural resources. ANNGTC expended considerable effort and resources during the years 1978 through 1981 in not only conducting extensive summer field data collection programs, but in clearing, prior to field entry, any land disturbing activities. Over 50% of the pipeline centerline route has been cleared, in addition to the anticipated material sites and many access roads. Subsequently, in 2001, Foothills Pipe Lines Alaska, Inc. coordinated with that Alaska State Historic Preservation Office (SHPO; Alaska Department of Natural Resources, Division of History and Archeology) in Anchorage and obtained updated Alaska Heritage Resource Survey (AHRS) files of archaeological and historic site location data for the entire right-of-way. Other permanent and temporary facilities constructed or activities outside of the pipeline ROW that are part of the Project will be surveyed and cleared for cultural resources prior to construction.

On October 7, 1980, the OFI submitted a proposal to the Advisory Council on Historic Preservation (ACHP) for a Memorandum of Agreement (MOA) pursuant to §106 of the National Historic Preservation Act of 1966 and 36 CFR Part 800.4(d). The MOA was approved by representatives of the Department of Interior, Bureau of Land Management and Bureau of Indian Affairs, SHPO, and U.S. Fish and Wildlife Service. Section Q(2) of the MOA requiring that: "A Pipeline Salvage Plan, covering all potential emergency situations, will be developed by the Office of the Federal Inspector in consultation with the SHPO within 30 days of this completed ACHP MOA. Any Salvage Plan developed will be limited to salvaging cultural resources in areas subject to disturbance by project activities only." By letter of February 10, 1982, the ACHP advised OFI that a Pipeline Salvage Plan, prepared in consultation with the Alaska SHPO, had been accepted by ACHP.

ANNGTC initiated informal consultation with the SHPO in March 2002 and identified the desire of SHPO to develop a Programmatic Agreement (PA) to replace the old 1982 MOA. The purpose of a Programmatic Agreement (PA) is to establish a set of procedures and areas of responsibilities for 'an entire agency program; for large and complex projects as a means to eliminate repetitive requests for comment and other types of requests'. And, 'when effects (of a

¹ Office of History and Archaeology, Department of Natural Resources (OHA/DNR)Workshop April 3, 2002.

project) are similar or repetitive in nature and/or are multistate or regional in scope.' In general, the intent is to streamline the Section 106 process through identifying areas where SHPO and/or Advisory Council on Historic Preservation (ACHP) reviews of methods, measures and treatments will not be required, and, to identify the roles and areas of responsibilities of the agencies.

Signatories for the 1982 MOA included Department of Interior, Bureau of Land Management and Bureau of Indian Affairs, SHPO and U.S. Fish and Wildlife Service. It will be important to review this list and consider expanding it in developing a PA to include other stakeholders including regional Native representatives or consortiums.

In general, ANNGTC believes that 1982 MOA and Pipeline Salvage Plan are valid and can be retooled into a PA. An outline provided by the SHPO for PAs¹ is organized for historic buildings, but indicates the general form for other cultural resources. A copy of this example PA document is provided in Attachment A to this section.

3.2 <u>CRITERIA</u>

3.2.1 Basic Project Criteria

The construction phase objectives are to preclude negative impacts to significant cultural resources by avoidance or, if this is not possible, to preserve significant data. The primary scheduling objective is to be in compliance with cultural resources regulations before construction begins for each portion of the alignment or associated facility.

3.2.2 Statutes, Regulations and Other Applicable Authorities

- Alaska Historic Preservation Act, AS 41.35.010.
- Alaska Statute, AS 41.35.200.
- Alaska Statute, AS 11.46.482(a)(6).
- Alaska Statute, AS 12.65.5.
- OHA, SHPO Reporting Standards and Guidelines for Investigating and Reporting Archaeological and Historic Properties in Alaska, dated May 1, 2000.
- Advisory Council on Historic Preservation, 36 CFR Part 800, as Revised, December 2000.
- National Historic Preservation Act of 1966 (Section 106) as Revised, 1999.
- Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469.
- Archeological Resources Protection Act of 1979, 16 USC 470.
- American Indian Religious Freedom Act of 1978.

- Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Under Section 110 of the National Historic Preservation Act 63 Fed Reg. 20495-20508, 1998.
- Native American Graves Protection and Repatriation Act (1990), PL 101-601; 25 USC 3001-30013; 104 Stat. 3048-3058; 43 CFR 10.
- The Secretary of Interior's Standards for Archaeology and Historic Preservation. Federal Register 44716-68, 1983.
- Executive Order No. 13007, May 1996
- 18 CFR 380.12, "FERC's Environmental Reports for Natural Gas Act Applications," and FERC environmental policy guidelines thereunder;
- Federal Right-of-Way Grant for the Alaska Natural Gas Transportation System Alaska Segment, Serial No. F-24538 (December 1, 1980), as such may be updated and/or amended from time to time.
- Federal Energy Regulatory Commission conditional certificate of public convenience and necessity, issued on December 16, 1977, as such is finalized.

3.3 METHODOLOGIES

3.3.1 Programmatic Agreement (PA) for Cultural Resource Protection

The Project will coordinate with the Alaska SHPO in the development of a Project-specific PA for Cultural Resource Protection. This agreement would address the procedures and areas of responsibilities for coordinating the SHPO and/or Advisory Council on Historic Preservation (ACHP) reviews of the CRP Program during all phases of the Project. ANNGTC is committed to working closely with the SHPO to develop an acceptable agreement.

3.3.2 Cultural Resources Protection (CRP) Plan

The Project will prepare a CRP Plan that will include the following elements:

Pre-Construction

- Identification of significant cultural resources
 - Background research
 - Archival information
 - Interviews with knowledgeable individuals
 - o Surveys
 - o Testing (if needed)
 - Assessment of significance
 - Reporting

- Concurrence of SHPO
- Avoidance of Negative Impact
 - Avoidance of resource
 - o Preservation recovery of significant data
 - Reporting
- Concurrence of SHPO

Construction

- An instructional program for all construction personnel concerning cultural resources will be implemented through the Environmental Management Program2. This includes specific instructions to be provided to clearing, grading and ditching operators.
- If a significant cultural resource is found during construction, the Pipeline Salvage Plan, identified above, will be operative.

Proper Disposition of Archaeological Material

• Curatorial arrangements, applicable to both the pre-construction and construction periods.

Other topics included in the CRP Plan will be developed through the development of the PA with the SHPO.

3.4 FIGURES AND TABLES

(None)

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² See Environmental Management Program, Section 2-1. The cultural resources protection training is also applicable to field activities conducted during the pre-construction period, such as ROW surveying.

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3.6 ATTACHMENTS

3.A – Example Programmatic Agreement, Alaska DNR Office of History and Archaeology, April 2002.

ATTACHMENT 3.A

Example Programmatic Agreement Alaska DNR Office of History and Archaeology April 2002

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PROGRAMMATIC AGREEMENT AMONG
THE (IDENTIFY RESPONSIBLE AGENCY OFFICIAL)
THE (IDENTIFY FEDERAL AGENCY)
THE ALASKA STATE HISTORIC PRESERVATION OFFICER
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING

MAINTENANCE, REHABILITATION, CONSTRUCTION AND REPAIR OPERATIONS ON (HISTORIC RESOURCE)

WHEREAS, (identify the responsible agency official/federal agency) proposes to carry out a variety of activities to include, but not be limited to, its program to (identify the activity: maintain, rehabilitate, construct, and repair) (identify the resource types: buildings, structures, roads, grounds, bridges, and associated landscaping) within the (identify location or historic property) and to (describe any other activities) within the boundaries of (identify location or historic property) including, but not limited to (identify activities that may have an adverse effect) in order to meet its program objectives; and

WHEREAS, (identify the responsible agency official/federal agency) has determined that these activities may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Advisory Council on Historic Preservation (ACHP) and the Alaska State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800.14(b) of the regulations (36 CFR Part 800) implementing Sections 106, 110, and 111 of the National Historic Preservation Act of 1966, as amended (NHPA) (16 U.S.C. 470); and

NOW, THEREFORE, (identify the responsible agency official/federal agency), the ACHP, and the SHPO agree that (identify responsible agency official/federal agency) shall (identify the activities: maintain, rehabilitate, construct, and repair properties) within the boundaries of (identify location or historic property) in accordance with the following stipulations to satisfy (identify responsible agency official/federal agency)'s Section 106, 110, and 111 responsibilities for all individual undertakings of the program. This PA does not create any obligations for (identify responsible agency official/federal agency) in addition to those found in the statutes and regulations found or in excess of available appropriated funds.

STIPULATIONS

(Identify responsible agency official/federal agency) shall ensure that the following measures are carried out:

I. POLICY

A. (Identify responsible agency official/federal agency) shall maintain and preserve the historic integrity of all historic properties at (identify location or historic resource agency) and review the undertakings consistent with the requirements of the NHPA as implemented by regulations published at 36 CFR Part 800, and the Secretary of the Interior's Guidelines for Identification (48FR44720-23) and the Secretary of the Interior's Standards for Historic Preservation Projects (36 CFR 68) and for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service, 1992).

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II. APPLICABILITY

A. This PA applies to all undertakings within the boundaries of (identify location or historic resource) that are under the direct or indirect jurisdiction of (identify responsible agency official/federal agency) including undertakings performed by (identify responsible agency official/federal agency)'s lessees or permittees.

III. DELEGATION OF AUTHORITY

- A. (Identify the responsible agency officials) are the responsible agency officials as defined in 36 CFR Part 800.2 (a) for purposes of Section 106 compliance.
- B. Stipulate procedures that integrate the activities of the responsible agency official relevant to this agreement with the policies and objectives of the federal agency delegating authority for program administration and Section 106 compliance.
- C. Stipulate the minimum professional qualifications of personnel the responsible agency official responsible for implementing stipulations of the agreement.
- D. The Alaska State Historic Preservation Officer and the Advisory Council may at any time contact the (identify the federal agency historic preservation officer) to request review of (Identify the responsible agency officials) decisions subject to the agreement.

III. REVIEW

- A. All reviews required by this PA must be completed before (identify responsible agency official/federal agency) final approval of any project or any irrevocable commitment of funds by (identify responsible agency official/federal agency) to (identify activities: rehabilitate, restore, repair, maintain, or renovate a property) within (identify location or historic resource agency).
- B. (Identify activities: new construction, demolition projects, training and other mission related activities, etc.) that may affect historic properties will be reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800. (Subject to case by case review. May attach list as appendix.)
- C. (Identify activities: routine maintenance such as cleaning of administrative and living spaces, and routine landscape maintenance such as grass mowing, shrub trimming, and minor pruning of trees) are exempt from review under this PA. (No longer subject to review. May attach list as appendix.)
 - D. This PA will be inapplicable for emergency repairs necessitated by public safety.
- E. Parties agree the Area of Potential Effect (APE) will be the individual building when a proposed action is limited to the maintenance or rehabilitation of its interior (i.e. undertaking).
- 1. (Identify responsible agency official/federal agency) shall specify an APE for projects involving: exterior features, ground disturbing activities, new construction, additions, demolition of buildings or structures, within the (identify location or historic resource) and the immediate, surrounding areas.

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- 2. (Identify responsible agency official/federal agency) shall specify an APE for (identify activities: training activities, utility installation, etc.) involving ground disturbing actions.
- F. (Identify responsible agency official) shall review each undertaking that may affect a historic property. Actions described in "Appendix A, Undertakings Reviewed Annually" by (identify responsible agency official and federal agency) /SHPO/ACHP", may proceed at the discretion of the (identify responsible agency official).
- G. All undertakings that will have an effect on the interior or exterior of a historic building, structure, or monument will be documented through the use of 35mm, video, or digital camera prior to implementation of the undertaking and at completion.
- 1. Any appropriate design plans and specifications, or other types of a record of treatment, such as a concise written description of the undertaking will be supplied to the (identify the responsible agency official) and maintained in a permanent record for the historic property for use in compiling the annual report as detailed in (identify Standard Operating Procedure per the responsible agency official and/or federal agency cultural resource management plan. Provide as an Appendix to PA) and this PA.
- H. (Identify responsible agency official/federal agency) shall consult with the SHPO and the ACHP on all undertakings subject to review pursuant to 36 CFR 800, with the exception of activities listed in Appendix A that are to be reviewed on an annual basis.
- 1. Should (identify responsible agency official/federal agency), in the process of carrying out any action listed in Appendix A, find that it has the potential to affect a previously unknown property that may be eligible for the Register or that the action will affect a known historic property in an unanticipated manner, (identify responsible agency official/federal agency) will cease work on only the portions of the action that have the potential to affect the property and proceed in accordance with 36 CFR 800.13(b).

IV. REVIEW - OTHER UNDERTAKINGS

- A. (Identify responsible agency official/federal agency) will consult with the SHPO and the ACHP to develop a separate Memorandum of Agreement to address issues related to the (identify other responsible agency official/federal agency programs or activities) processes with regard to actions in historic properties that require NHPA Section 106 consultation.
- B. When a major natural disaster or imminent threat to national security interrupts communications capability, (identify responsible agency official/federal agency) need not contact the SHPO or the ACHP regarding stabilizing or repairing historic properties.
- 1. (Identify responsible agency official/federal agency) will undertake emergency actions pursuant to (identify Standard Operating Procedure per the responsible agency official and/or federal agency cultural resource management plan. Provide as an Appendix to PA) to repair or stabilize historic properties and prevent further damage before SHPO/ACHP consultation.
- 2. Where possible, such emergency measures will be undertaken in such a manner that it does not prevent future preservation or restoration of a historic property. Permanent repairs to historic properties beyond the scope of emergency undertakings are not authorized by this stipulation.

V.

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OTHER AGREEMENTS

A. (Identify responsible agency official/federal agency) may enter into other PAs or Memoranda of Agreement that may be negotiated with the SHPO, ACHP, and other interested parties, if any, that are specific to certain programs, projects, or activities.

VI. MONITORING

A. The ACHP and the SHPO may monitor activities carried out pursuant to this PA, and the ACHP will review such activities if so requested. (Identify responsible agency official/federal agency) will coordinate access for the ACHP and the SHPO to carry out such monitoring and review.

VII. REPORTS

- A. (Identify responsible agency official/federal agency) will prepare an annual report covering Section 106 undertakings, due at the end of the calendar year, following its implementation of the PA.
- 1. The report will be submitted concurrently to the SHPO and the ACHP for review, comment, and consultation as needed. The report will also be made available to interested members of Native American tribes, and the public upon request.
- 2. The annual report shall include information on the undertakings implemented under the provisions of the PA (See Appendix A). Information shall describe the undertakings as to type, number and the (identify responsible agency official/federal agency) finding resulting from application of the criteria of effect.
- 3. It will make recommendations for modifications of Appendices that may increase the effectiveness of the review process.
- 4. A summary of all undertakings reviewed separately by the SHPO and the ACHP that were implemented during the year will also be included.
- 5. The report will be reviewed semi-annually for the first year and the annually thereafter.
- 6. Copies of the pertinent documentation of the activities undertaken for-each building, structure, or monument will be provided as an appendix to the annual report.

IX. AMENDMENT

A. If any party to this PA determines that their terms cannot be met or believes an amendment is necessary, that party shall immediately request the consulting parties to consider an amendment to the PA pursuant to 36 CFR 800.14. Such amendment shall be executed in the same manner as the original documents. No amendment to the PA will go into effect without the concurrence of all consulting parties.

X. TERMINATION

A. Any party to the PA may terminate the agreement by providing thirty (30) days written notice to all other parties, provided that the parties will consult prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, all proposed undertakings will be reviewed by (identify responsible agency official/federal agency)

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under the consultation process set forth under Subpart B of 36 CFR Part 800 with regard to individual

XI. DISPUTE RESOULTION

undertakings covered by this PA.

- A. Should the SHPO or the ACHP object within thirty (30) days to any actions pursuant to this PA, (identify responsible agency official/federal agency) shall consult with the objecting party to resolve the objection. If (identify responsible agency official/federal agency) determines that the objection cannot be resolved, (identify responsible agency official/federal agency) shall forward all documentation relevant to the dispute to the ACHP, and the ACHP will either:
- 1. Provide (identify responsible agency official/federal agency) with recommendations which (identify responsible agency official/federal agency) will take into account in reaching its final decision regarding the dispute: or
- 2. Notify (identify responsible agency official/federal agency) that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by (identify responsible agency official/federal agency) in accordance with 36 CFR 800.7 (c)(4) with reference to the subject of the dispute.
- 3. Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute. (Identify responsible agency official/federal agency) responsibility to carry out all actions under this PA that are not subject to dispute will remain unchanged.

XII. FAILURE TO CARRY OUT AGREEMENT

A. In the event (identify responsible agency official/federal agency) does not carry out the terms of this PA, all proposed undertakings will be reviewed by (identify responsible agency official/federal agency) under the consultation process set forth under Subpart B of 36 CFR Part 800 with regard to individual undertakings covered by this PA.

XIII. ANTI DEFICIENCY ACT

A. All commitments made under this PA are subject to the availability of funds. Nothing in this agreement will be construed as limiting or affecting the legal authorities of the (identify responsible agency official/federal agency), SHPO, or ACHP, or as binding upon the parties to perform beyond their respective authorities or to require any of the parties to assume or expend funds in excess of available appropriations. If funds are not available, the (identify responsible agency official/federal agency) will consult to amend or terminate this agreement.

XIV. DURATION

A. Stipulate a length of term (five years, ten years, etc.) for the agreement.

Execution and implementation of this Programmatic Agreement evidences that (identify responsible agency official/federal agency) has satisfied its Section 106 responsibilities for all individual undertakings of the (identify the agency program.)

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Signatures (IDENTIFY RESPONSIBLE AGENCY OFFICIAL) _Date_ (Title), (identify responsible agency official) (IDENTIFY FEDERAL AGENCY) By_ _Date_____ (Title), (identify federal agency) ALASKA STATE HISTORIC PRESERVATION OFFICER By___ _Date_ **SHPO** ADVISORY COUNCIL ON HISTORIC PRESERVATION Date By_ **ACHP** Executive Director

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APPENDIX A

Undertakings that may be Reviewed Annually by (Identify responsible agency official/federal agency) /SHPO/ACHP

- 1. Maintenance work on existing features such as roads, fire lanes, mowed areas, active disposal areas, and manmade ditches, waterways, and ponds when no new ground disturbance is proposed.
- 2. Outdoor recreational programs including hunting, fishing, and non-consumptive uses in accordance with (identify responsible agency official/federal agency) and (identify responsible agency official/federal agency) regulations.
- 3. The following Natural Resources Management activities: timber harvests, tree planting and maintenance of wildlife food and shrub plots in previously disturbed areas, prescribed burning of range land and the improvement of existing stream crossings.
- 4. Existing harvest activities or planting, cultivation, and harvest of existing crops not exceeding the depth of existing activities. Removal and replacement in kind of plant materials when they pose an imminent hazard to personnel or structures.
- 5. Ordnance disposal in accordance with prescribed (identify responsible agency official/federal agency), and (identify other) regulations.
- 6. Paving and repair of streets, driveways, parking lots, curbs and gutters as they now exist. When historic materials exist, they are to be retained.
- 7. Repair and replacement of existing utilities in their present configuration and alignment. Replacement, removal or upgrading of electrical wiring. Replacement, removal or upgrading of water and plumbing systems when historic features such as hand pumps or plumbing fixtures are retained.
- 8. All maintenance and repair work on elements that are not visible and do not contribute to the historic significance of a property.
- 9. Refinishing of surfaces with chemically compatible materials of historic or existing color. Removal of non-contributing wall coverings, paneling or wainscoting.
- 10. Repair and/or replacement in kind of existing roofing material provided the color meets the standards of the (identify responsible agency official/federal agency installation design guide or proscribed standard) or the historic color. Adequate anchorage of the roofing material to guard against wind damage and moisture penetration shall be provided.
- 11. Repair of existing doors and/or replacement in kind when beyond repair and done to match the existing material and form.
- 12. Repair of existing window frames and sashes by patching, splicing, consolidating, or otherwise reinforcing or replacing only these parts that are extensively deteriorated or missing provided no changes results to the interior or exterior appearance of the window. Adjusting of counterweights is acceptable.

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- 13. Replacement of broken clear glass with clear glass of similar thickness when no modification or damage to adjacent surfaces will result.
- 14. Repair of existing materials and small scale in kind replacement of wood siding, trim, porch decking, porch rails, joists, columns, and stairs (including framing).
- 15. Repair of footings, foundations, and retaining walls or in kind replacement of those portions done to match existing material and design. Any associated mortar replacement shall be with a mortar mix that matches exactly historic mortar mixes. Excavation for the repair or replacement within two feet of existing footings, foundations and walls.
- 16. Removing deteriorated or damaged paint or coatings down to the next sound layer by hand scraping or sanding. Abrasive methods, sandblasting and waterblasting are specifically prohibited. Encapsulation of lead-based paint is acceptable.
- 17. Repair of existing historic cabinetwork and cabinet hardware. Replacement in kind of only those elements that have deteriorated beyond repair when done to match the existing design and materials.
- 18. Replacement of kitchen and bathroom appliances, fixtures, fittings, accessories, and cabinets that are less than 45 years old with compatible items.
- 19. Installation of hardware to include: dead bolts, door hinges, latches and locks, window latches, locks and hinges and door peep holes provided historic materials are not removed. New hardware shall be of contemporary design and made of the same material as remaining historic hardware.
- 20. Installation of fire, smoke, and security detectors provided all affects to historic materials are reversible.
- 21. Repair, refinishing and/or replacement in kind of non-historic flooring and floor coverings to include vinyl tile and/or carpet when done in kind to match existing materials and design that when attached to historic materials is done in a reversible manner.
- 22. Repair and replacement in kind of only those portions of historic flooring that are extensively deteriorated.
- 23. Removal of animals, birds, insects and their associated debris when no loss of historic materials will result.
- 24. Replacement of signs in kind. Installation of traffic signs as required by law when circulation and quantity of traffic adjacent to historic properties or within historic districts will not be affected.
- 25. All exterior maintenance and repair of non-historic structures within the viewshed of historic properties provided no change in the overall appearance or color of materials results.
- 26. Repair of existing window, door, and porch screens and storm windows or doors.

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EXAMPLE ONLY

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- 27. Energy conservation measures to include: repair of existing heating and cooling plants and duct work, modification of HVAC control systems, insulation of roofs, crawl spaces, ceilings, attics, floors and around pipes/ducts as long as these measures do not induce, retain, or introduce moisture into a building, interior modifications when the interior space is not considered significant based on inventories, caulking and weather stripping consistent with appearance of the building and replacement or modification of the lighting systems. These measures should not be visible or alter or detract from those qualities that make the resource eligible for the National Register of Historic Places.
- 28. All ground disturbance reviewed through the (identify responsible agency official/federal agency excavation safety and monitoring programs).
- 29. All tactical excavations reviewed through the (identify responsible agency official/federal agency tactical excavations permit review program).
- 30. Observed or reported inadvertent, but not extensive, damage to subsurface historic properties as a result of training and/or maneuver.